

CRAVATH, SWAINE & MOORE

9600

RECORDATION NO. Filed & Recorded

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

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RECORDATION NO. Filed & Recorded

INTERNATIONAL TELEX: 620976

TELETYPE: 710-581-0338

TELEX: 125547

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INTERNATIONAL COMMERCE COMMISSION

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INTERNATIONAL COMMERCE COMMISSION

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INTERNATIONAL COMMERCE COMMISSION

Consolidated Rail Corporation

Participation Agreement Dated as of July 1, 1978

8.50% Conditional Sale Indebtedness

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Consolidated Rail Corporation for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of July 1, 1978, between United States Trust Company of New York, as trustee, vendee, and General Electric Company, as builder, vendor;

(b) Agreement and Assignment dated as of July 1, 1978, between General Electric Company, as builder, and Mellon Bank, N.A., as agent, assignee;

2(a) Lease of Railroad Equipment dated as of July 1, 1978, between Consolidated Rail Corporation, as lessee, and United States Trust Company of New York, as trustee, lessor;

RECEIVED
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I.C.C.
FEE OPERATION BR.

MAURICE T. MOORE
BRUCE BROMLEY
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER
WILLIAM B. MARSHALL
RALPH L. MCAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. DE KOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK

GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES P. COVATTA
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HEGEL
FREDERICK W. D. SCHWARTZ
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID G. BREWSTER
PAUL M. BOBYK
RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL

COUNSEL
ROSWELL L. GILPATRICK
CARLYLE E. MAW
L. R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON
4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 290530
33 THROMGORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 6814901
CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

Consolidated Rail Corporation
William F. Sullivan

(b) Assignment of Lease and Agreement dated as of July 1, 1978, between United States Trust Company of New York, as trustee, lessor, and Mellon Bank, N.A., as agent, vendor.

The names and addresses of the parties to the aforementioned Agreements are as follows;

(1) Agent-Vendor-Assignee:

Mellon Bank, N.A.
Mellon Square
Pittsburgh, Pennsylvania 15230

(2) Trustee-Vendee-Lessor:

United States Trust Company
of New York
130 John Street
New York, N.Y. 10038

(3) Builder-Vendor:

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

Consolidated Rail Corporation
1310 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Trustee-Vendee-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of the following:

Twenty-seven (27) 2,250 h.p. Model B23-7 diesel-electric locomotives bearing identifying numbers CR1940 through CR1966, both inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

J. Barclay Collins CEW

J. Barclay Collins
As Agent for Consolidated
Rail Corporation

H. G. C. Homme, Jr., Acting Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.

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BY HAND

RECORDATION NO. 9600 ^A Filed & Recorded

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[CS&M Ref. 2043-849]

~~INTERNATIONAL~~ COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of July 1, 1978

between

GENERAL ELECTRIC COMPANY

and

MELLON BANK, N.A., as Agent

AGREEMENT AND ASSIGNMENT dated as of July 1, 1978, between GENERAL ELECTRIC COMPANY (the "Builder") and MELLON BANK, N.A., as Agent (the "Assignee") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Builder and United States Trust Company of New York, acting as Trustee (the "Vendee") under a Trust Agreement No. 1978-3 dated as of January 3, 1978, as amended by Amendment No. 1 dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding and GMAC Leasing Corporation, have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") providing for the construction, conditional sale and delivery, on the conditions therein set forth, by the Builder and the conditional purchase by the Vendee of the railroad equipment described in Annex B to the CSA (the "Equipment");

WHEREAS the Vendee and Consolidated Rail Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment; and

WHEREAS the Builder is willing to guarantee certain obligations of the Lessee under the Lease and of the Vendee under the CSA pursuant to a Guaranty Agreement dated the date hereof (the "Guaranty Agreement");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That in consideration of the sum of \$1.00 and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to the Builder under the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with any of the provisions of, the CSA, provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall con-

struct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder.

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the

right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA, shall pay to the Builder an amount equal to the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of subparagraph (b) of the third paragraph of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee:

(a) a bill or bills of sale from the Builder to the Assignee dated the date of delivery thereof and transferring to the Assignee the Builder's title to and its security interest in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, the Builder had

legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder for the units of Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee the Builder's title to and its security interest in the units of Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder,

without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms, that it is now in force without amendment thereto and that no authorization or approval from, consent of or filing, registration or qualification with any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by the Builder of the CSA;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.


SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. The parties hereto acknowledge that the Guaranty Agreement contains certain provisions regarding the consent of the Builder as Guarantor thereunder in the event of any modification of this Assignment or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor thereunder.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL ELECTRIC COMPANY,

by


General Manager--
Domestic Locomotive Marketing
Department

[Corporate Seal]

Attest:


Attesting Secretary

MELLON BANK, N.A., as Agent,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of July 1, 1978.

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by

Assistant Vice President

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF ERIE,)

On this 24 day of July 1978, before me personally appeared J. P. Dwyer, to me personally known, who, being by me duly sworn, says that he is a General Manager-- Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Collette Wroner
 Notary Public

[Notarial Seal]

COLLETTE WRONER, NOTARY PUBLIC
 LAWRENCE PARK TWP., ERIE CO., PENNA.
 MY COMMISSION EXPIRES FEB. 10, 1979

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF ALLEGHENY,)

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of MELLON BANK, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank, and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

 Notary Public

[Notarial Seal]

AGREEMENT AND ASSIGNMENT

Dated as of July 1, 1978

between

GENERAL ELECTRIC COMPANY

and

MELLON BANK, N.A., as Agent

AGREEMENT AND ASSIGNMENT dated as of July 1, 1978, between GENERAL ELECTRIC COMPANY (the "Builder") and MELLON BANK, N.A., as Agent (the "Assignee") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Builder and United States Trust Company of New York, acting as Trustee (the "Vendee") under a Trust Agreement No. 1978-3 dated as of January 3, 1978, as amended by Amendment No. 1 dated as of the date hereof (the "Trust Agreement") with J. P. Morgan Interfunding and GMAC Leasing Corporation, have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") providing for the construction, conditional sale and delivery, on the conditions therein set forth, by the Builder and the conditional purchase by the Vendee of the railroad equipment described in Annex B to the CSA (the "Equipment");

WHEREAS the Vendee and Consolidated Rail Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment; and

WHEREAS the Builder is willing to guarantee certain obligations of the Lessee under the Lease and of the Vendee under the CSA pursuant to a Guaranty Agreement dated the date hereof (the "Guaranty Agreement");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That in consideration of the sum of \$1.00 and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to the Builder under the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with any of the provisions of, the CSA, provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall con-

struct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder.

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the

right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA, shall pay to the Builder an amount equal to the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of subparagraph (b) of the third paragraph of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee:

(a) a bill or bills of sale from the Builder to the Assignee dated the date of delivery thereof and transferring to the Assignee the Builder's title to and its security interest in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, the Builder had

legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder for the units of Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee the Builder's title to and its security interest in the units of Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder,

without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms, that it is now in force without amendment thereto and that no authorization or approval from, consent of or filing, registration or qualification with any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by the Builder of the CSA;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. The parties hereto acknowledge that the Guaranty Agreement contains certain provisions regarding the consent of the Builder as Guarantor thereunder in the event of any modification of this Assignment or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor thereunder.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL ELECTRIC COMPANY,

by

[Corporate Seal]

General Manager--
Domestic Locomotive Marketing
Department

Attest:

Attesting Secretary

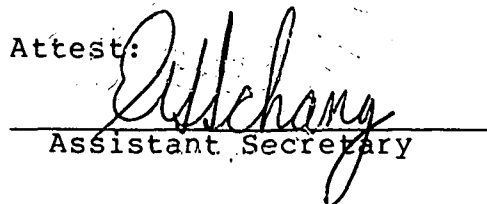
MELLON BANK, N.A., as Agent,

by


Vice President

[Corporate Seal]

Attest:


Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of July 1, 1978.

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by


Assistant Vice President

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF ERIE,)

On this day of July 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a General Manager-- Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF ALLEGHENY,)

On this *4th* day of July 1978, before me personally appeared *A. J. Donahue*, to me personally known, who, being by me duly sworn, says that he is a Vice President of MELLON BANK, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank, and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Dorothy Dixon
 Notary Public

DOROTHY DIXON, Notary Public
 Pittsburgh, Allegheny County, PA
 My Commission Expires July 20, 1982

[Notarial Seal]